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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 CURTIS S. THOMPSON,

11 Plaintiff,

12 v.

13 SCOTT O'TOOLE,

14 Defendant.

CASE NO. C05-2064 JLR

ORDER ON MOTION FOR
RECUSAL

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16 This matter comes before the Court under Local General Rule 8(c). During the course of
17 his bench trial before U.S. District Judge James L. Robart, Plaintiff moved for Judge Robart to
18 recuse himself from the above-captioned matter. Judge Robart declined to recuse himself
19 voluntarily and the matter was referred to the Chief Judge. Dkt. No. 177. Plaintiff's request is
20 therefore ripe for review by this Court.

21 The standards for recusal are well known. Although a judge must recuse himself if a
22 reasonable person would believe that he is unable to be impartial (Yagman v. Republic
23 Insurance, 987 F.2d 622, 626 (9th Cir. 1993)), a litigant may not use the recusal process to
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1 remove a judge based on adverse rulings in the pending case: the alleged bias must result from
2 an extrajudicial source (United States v. Studley, 783 F.2d 934, 939 (9th Cir. 1986)).

3 Reviewing the transcript of the proceedings in this matter before Judge Robart, it is
4 unmistakably clear that Plaintiff is seeking Judge Robart's removal because Plaintiff is
5 displeased with his rulings on a number of matters: primarily, Judge Robart's decisions about the
6 structure of the trial (particularly his placing of time limits on the parties' presentations), his
7 sustaining of objections to Plaintiff's cross-examination of defense witnesses, and the denial of
8 Plaintiff's repeated requests for appointed counsel. The risk that plaintiff is using allegations of
9 bias to overturn the decisions of the court is therefore considerable: in effect, Plaintiff is seeking
10 to remove Judge Robart from this case because of his performance while presiding over this
11 matter. Because a judge's conduct in the context of pending judicial proceedings does not
12 constitute the requisite bias under § 144 or § 455 if it is prompted solely by information that the
13 judge received in the context of the performance of his duties, bias is almost never established
14 simply because the judge issued adverse rulings.

15 In order to overcome this presumption, Plaintiff is required to show that facts outside the
16 record drove decisions or that the presiding judicial officer's rulings were so irrational that they
17 must be the result of prejudice. Plaintiff does not allege any facts outside the record that
18 improperly influenced the decisions in this matter. Having reviewed the record as a whole, the
19 Court finds that Judge Robart's procedural and evidentiary rulings are well within his discretion
20 and are entirely reasonable based on the proceedings. If Plaintiff believes that Judge Robart's
21 rulings were legally incorrect, that argument must be made on appeal rather than in a motion to
22 recuse.

1 Plaintiff has identified no error of law or fact, much less a determination that was
2 so outlandish as to give rise to an inference of bias. The Court finds that Judge Robart's
3 impartiality cannot reasonably be questioned. There being no evidence of bias or prejudice,
4 Plaintiff's request for recusal is DENIED.

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6 The clerk is ordered to provide copies of this order to all counsel.

7 Dated this 9th day of December, 2011.

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11 Marsha J. Pechman
12 Chief United States District Judge
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